IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 127 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

CELLULOSE PRODUCTS INDIA LTD.

Appearance:

1. INCOME TAX REFERENCE No. 127 of 1987
MR BB NAIK with MR MANISH R BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 18/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following questions have been referred for the opinion of this Court in respect of assessment year 1980-81 :-

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in confirming the order of the CIT(A) whereby it had been held that (1) Rs.702/- on account of personal accident insurance policy, (2) half of telephone expenses Rs.4935/- and (3) reimbursement of medical expenses Rs.3182/- could not be treated as medical expenses perquisites for purposes of disallowance u/s. 40(c) of the Income-tax Act, 1961 ?"

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in confirming the view taken by the CIT(A) in directing the ITO to adopt the value of perquisite in respect of motor cars in accordance with Rule 3(c)(ii) of the Income-tax Rules, 1962 ?"

2. We have heard Mr BB Naik, learned counsel for the revenue. Though served, none appears for the respondent-assessee.

3. As far as the first question is concerned, it relates to two items. As regards the payment of Rs.702/paid by the assessee as premium of personal accident insurance policy of its Directors, a similar controversy was raised between the same parties in respect of assessment years 1981-82 and 1982-83 in ITR No. 41 of 1987 decided on 23.1.2001. After hearing the learned counsel for the revenue in the said case, this Court held that the Tribunal was right in confirming the order of the CIT(A) whereby it was held that the amount paid on account of personal accident insurance policy could not be treated as a perquisite for the purposes of disallowance under Section 40(c) of the Act. We accordingly answer this part of the question in the affirmative i.e. in favour of the assessee and against the revenue.

As regards reimbursement of medical expenses, the said controversy was also considered by this Court in the aforesaid reference decided on 23.1.2001. For the

reasons recorded in the aforesaid reference between the same parties, we answer this part of the question in the negative i.e. in favour of the revenue and against the assessee.

4. Coming to the second question, the learned counsel for the revenue submits that the view (followed by the Tribunal) in 135 ITR 35 has been overruled by the Apex Court in CIT vs. British Bank of Middle East, 251 ITR 217. In the said decision, the Apex Court has held that the value of free cars provided by the assessee to its employees is to be determined under Section 40A(5), and not under Rule 3, for the purpose of disallowance in the assessment of the assessee-employer.

Following the aforesaid decision, we answer the question in the negative i.e. in favour of the revenue and against the assessee.

5. The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-